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SUBJECT: POLAND SEEKS TO BE EUROPEAN IPR LEADER

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¶1. (U) Summary: Poland's Minister of Culture has ambitious plans to introduce cutting edge EU-wide legislation regarding intellectual property rights (IPR) during Poland's EU presidency in 2011. The first step is an update to Polish legislation, at the end of 2008. At the same time, a consensus supporting creation of specialized IPR courts seems to have formed within the Polish government, although many details remain to be worked out. One already-enacted change to Polish law closed a loophole that blocked prosecution of downstream sellers of pirated goods. Also, contacts report that the last Polish government's anti-corruption drive had positive effects in the Polish border guards, and that the technical competence of Polish police to handle IPR cases is on the rise. End summary.

Minister of Culture's Ambitious Plans

¶2. (SBU) On January 30, Poland's Minister of Culture and National Heritage outlined for a Polish inter-agency group ambitious plans to lead Europe in increasing IPR protections. Minister Bogdan Zdrojewski asked government agencies and stakeholders from the private sector to give the Ministry of Culture -- which has the lead on IPR issues within the Polish government -- proposals for needed legislative changes by April. He said that passing a new IPR bill will be a priority for him during the second half of 2008. Looking forward, in 2011 Zdrojewski wants to hold an international conference on IPR to showcase "modern solutions" for protecting IPR. These efforts would culminate during Poland's EU presidency, in the second half of 2011, with a Polish push for new EU-wide legislation.

Amendment to Industrial Property Law Having Effect

¶3. (SBU) One very important change to Polish legislation has already been made. In May 2005, the Polish Supreme Court ruled that the criminal penalties provided in Articles 305 and 306 of the Industrial Property Law could only be applied to the first importer/producer of counterfeit goods (see ref). Treating the decision as a "get out of jail free" card, some vendors went so far as to post copies of the decision on stands selling pirated goods. In August 2007, an amendment that reworded Articles 305 and 306 entered into effect, closing the loophole. Michal Siciarek, chairman of

the AmCham's IPR Committee, told EconOff that, as a result, the number of infringement prosecutions has picked up.

Specialized IPR Courts

¶4. (SBU) Another reform idea already moving forward is the creation of specialized courts to handle IPR cases. An initial draft of legislation to create such courts has been prepared by the Ministry of Justice, and circulated for comment among judges. At the moment the proposal is bogged down because of an argument about how broad the jurisdiction of the specialized courts should be. According to contacts at the Ministry of Justice and in the local patent bar, the Ministry of Justice would like to limit the court's competence to patents and trademarks, while the Patent Office and Ministry of Culture are pushing to also include copyrights, which would substantially increase the court's anticipated workload. At the interagency meeting, the Minister of Culture committed to speak personally with the Minister of Justice, to get the legislation moving.

¶5. (SBU) The noteworthy point is that the discussion is no longer about whether to create a specialized court at all. The regular courts remain congested. Mariusz Kaczmarek, Director General of FOTA, a group representing film and audiovisual rightsholders, and Jan Baldyga, the anti-piracy coordinator for ZPAV, a group representing the recording industry, told EconOff that in major cities such as Warsaw a case may take three or four years to conclude. Counsel for the Business Software Alliance (BSA) stated that they rarely file civil cases, as the criminal process more quickly leads to closing down a vendor selling pirated goods.

Improvements in the Local Police And Border Guards

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¶6. (SBU) Adam Koniuszewski, Director of Corporate Affairs in Poland for Philip Morris, told EconOff that the attitude toward IPR protection in the government is "completely changed." He noted that a few years ago border guards would auction off smuggled cigarettes that had been seized, but that sort of thing no longer occurs. The former PiS-led government's drive to root out corruption had a substantial effect, with a number of border guards being dismissed. He believes the border guards are now somewhat understaffed, but those who remain are a distinct improvement. Although he said motivation to protect IPR is still sometimes lacking among some officials, things are moving "in the right direction," albeit more slowly than might be wished.

¶7. (SBU) Similarly, ZPAV's Baldyga and FOTA's Kaczmarek stated that the skills of local police teams dealing with internet piracy are increasing. Contributing to this is a special manual that ZPAV and FOTA helped to draft, which has been posted on the website of the police school, is available to police in the field via the internet, and also has been distributed among prosecutors.

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